

REMARKS

Claim 15-29 are pending. Claims 15-29 are subject to a Restriction Requirement. With respect to the Restriction Requirement, the Examiner requires Applicants to elect one of two (2) inventions which allegedly are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Restriction Requirement requires election to one of the following groups:

Group 1, claims 15-17, drawn to a method for testing with agonist; and

Group 2, claims 15-29, drawn to a method for testing with antagonist.

It should be noted that this grouping of claims does not reflect what Applicants believes to be the invention, namely a method for testing a compound for activity as an agonist or as an antagonist using eukaryotic cells that co-express a voltage-gated calcium channel and an inward rectifying potassium channel. It is the use of these cells that provides the single general inventive concept so as to provide unity of invention. Notwithstanding, in an earnest effort to be responsive to the Office Action, Applicants provisionally elect Group II. Claims 15-29 read on this election.

The Restriction Requirement also requires a species election as to the following:

Claim 19 – as to the type of calcium channel assayed;

Claim 23 – as to the fluorescent indicator; and

Claims 24-26 – as to the detecting step.

Applicants were uncertain as to whether it was required, to be fully responsive to the species election, to elect one species across the three groups or one species from each group.

Notwithstanding, claim 19 (and claim 16) have been amended to clarify that the L-type calcium channel complex comprises the three components, alpha 1C, alpha 2-delta and beta 2a, not is selected from the group consisting of the three components. Support for this amendment is found on page 7, lines 12-13. In that all three components are needed to make up a functional L-type calcium ion channel, a search of one component of the complex would not advance the determination of the patentability of the invention comprising an assay that uses a functional complex. As such, Applicants respectfully submit that the need for a species election as to this complex is moot. If the species election is to be maintained, Applicants provisionally elect the component alpha 1C for searching purposes.

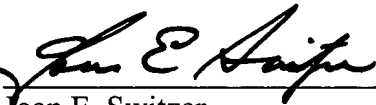
In that the fluorescent indicators listed in claim 23 are equivalent for purposes of the claimed assay, a search of one fluorescent indicator will not necessarily advance the determination of the patentability of the claimed invention. Similarly, in that the detecting steps

listed in claims 24-26 are equivalent for purposes of the claimed assay, a search of one detecting method will not necessarily advance the determination of the patentability of the claimed invention. Notwithstanding, in an earnest effort to be responsive to the Office Action, Applicants provisionally elect fluo-3 as the fluorescent species and FLIPR as the detecting step. Claims 15-25 and 27-29, respectively, read on these species.

It is believed that the claims are in a condition for allowance and a notice to that effect is earnestly solicited. If the Examiner believes that a telephone conference would be of value, he is requested to call the undersigned counsel at the number listed below.

Any additional fees required in connection with this submission may be taken from Merck Deposit Account No. 13-2755.

Respectfully submitted,

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